

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH TODD HINKLE,)	
)	
Plaintiff,	)	CASE NO. C2-05-574
)	
v.	)	JUDGE FROST
	)	MAGISTRATE JUDGE KING
NORFOLK SOUTHERN RAILWAY)	
COMPANY,)	
	)	Robert B. Thompson
	)	Vincent B. Browne
Defendant.	)	Harrington, Thompson,
	)	Acker & Harrington, Ltd.
	)	180 North Wacker Drive, 3 rd Floor
	)	Chicago, Illinois 60606
	)	T: 312-332-8811
	)	F: 312-332-2027
	)	Email: htah@harringtonlaw.com
	)	<i>Counsel for Plaintiff Joseph Todd Hinkle</i>

PLAINTIFF JOSEPH TODD HINKLE'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COMES the Plaintiff, JOSEPH TODD HINKLE, through his attorneys, HARRINGTON, THOMPSON, ACKER & HARRINGTON, LTD., and pursuant to Federal Rule of Civil Procedure 56, moves this Honorable Court for entry of an Order granting summary judgment to the Plaintiff with respect to the liability of the Defendant, NORFOLK SOUTHERN RAILWAY COMPANY. In support thereof, Plaintiff states:

1. Plaintiff Joseph Todd Hinkle sustained injuries while working for the railroad on February 27, 2003 as a result of an engineer's seat on a locomotive that was not securely mounted and braced.

2. Mr. Hinkle brought suit against the Defendant railroad alleging violations of the Federal Employers Liability Act, 45 U.S.C. § 51, et seq., the Locomotive Inspection Act,

49 U.S.C. § 20701 and the code of federal regulations (49 C.F.R. § 229.119 and 49 C.F.R. § 229.45).

3. The Defendant railroad is absolutely liable for the injuries sustained by Mr. Hinkle due to violations of the Locomotive Inspection Act, 49 U.S.C. § 20701, 49 C.F.R. § 229.119 and 49 C.F.R. § 229.45. Lilly v. Grand Trunk W.R.R. Co., 317 U.S. 481, 485, 63 S.Ct. 347, 350-51, 87 L.Ed. 411 (1943); McGinn v. Burlington Northern Railroad Company, 102 F.3d 295, 298 (7th Cir. 1996).

4. The fact that the engineer's seat was not securely mounted and braced and caused Mr. Hinkle to fall and sustain injury is undisputed and summary judgment under Federal Rule of Civil Procedure 56 is proper because the record, when viewed in its entirety, shows that there is no genuine issue of material fact in dispute and that Mr. Hinkle is entitled to judgment as a matter of law. McGinn v. Burlington Northern Railroad Company, 102 F.3d 295, 298 (7th Cir. 1996); Mickler v. Nimishillen & Tuscarawas Ry. Co., 13 F.3d 184, 186 (6th Cir. 1993), *cert. denied*, 114 S. Ct. 1835 (1994).

5. A memorandum of law in support of this motion for partial summary judgment has been filed herewith.

6. The only issues that will remain for trial are the nature, extent and duration of the injuries and damages sustained by Mr. Hinkle.

WHEREFORE, based upon the foregoing, Plaintiff, JOSEPH TODD HINKLE, prays that this Honorable Court enter an Order granting Plaintiff's Motion for Partial Summary Judgment on the issue of Defendant Norfolk Southern Railway Company's liability.

Respectfully submitted,

By: /s/Robert B. Thompson
Robert B. Thompson
Vincent B. Browne
Plaintiff's Attorneys
Harrington, Thompson, Acker & Harrington, Ltd.
180 North Wacker Drive, 3rd Floor
Chicago, Illinois 60606
Telephone: 312-332-8811
Facsimile: 312-332-2027
Email: htah@harringtonlaw.com

CERTIFICATE OF SERVICE

Joseph Todd Hinkle v. Norfolk Southern Railway Company

Case Number: C2-05-574

Judge Frost

Magistrate Judge King

I hereby certify that on July 27, 2006, I electronically filed the foregoing **PLAINTIFF JOSEPH TODD HINKLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following (copies of which may be obtained through the Court's system):

ATTORNEY FOR NORFOLK SOUTHERN RAILWAY COMPANY

R. Leland Evans
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
614/227-2000
614/227-2100 Fax
revans@porterwright.com

and I hereby certify that I have mailed by United States Postal Service the document to those attorneys and/or parties above not registered in the ECF system to assure service.

s/Vincent B. Browne
Vincent B. Browne
One of Plaintiff's Attorneys
Harrington, Thompson, Acker & Harrington, Ltd.
180 North Wacker Drive, 3rd Floor
Chicago, Illinois 60606
Telephone: 312-332-8811
Facsimile: 312-332-2027
Email: htah@harringtonlaw.com

